calf, 112 Iowa 540; *Dubuque Lumber Co.* v. *Kimball,* 111 Iowa 48; *Green* v. *Green,* 50 S. C. 514; *Hillhouse* v. *Jennings,* 60 S. C. 373. But such a doctrine can be sustained neither on principle nor on authority.

CONSOLIDATION OF RAILROADS AND CONDEMNATION OF SHARES OF DISSENTING STOCKHOLDERS.—In an early Pennsylvania case, where consolidation of railways had been authorized by the legislature, the court held that shares of dissenting stockholders could be condemned, even though the statute had not so provided. *Lauman* v. *Lebanon Valley R. Co.,* 30 Pa. St. 42. But this view has not received general support and has, in fact, been subjected to severe criticism. However, a recent North Carolina decision, interesting from the fact that it is almost without precedent, holds that the legislature may expressly authorize by statute the condemnation of stock of dissenting shareholders, where a majority of stockholders favor consolidation, even though the shares were issued prior to the Constitution of 1868, which first reserved to the state the right to amend charters granted by it. *Spencer et al.* v. *Seaboard Air Line Ry. Co. et al.* (1904), — N. C. —, 49 S. E. Rep. 96.

Under the general rule, if a corporation, when created, is without the authority to consolidate, either under its charter, or under general laws of the state, but later the legislature grants authority to consolidate, the exercise of such power requires the unanimous consent of the stockholders. *Earl* v. *Seattle Etc. R. Co.,* 56 Fed. Rep. 909; *Mowrey* v. *Indianapolis Etc. R. Co.,* 4 Biss. 78; *Mills* v. *Central R. Co.,* 41 N. J. Eq. 1, 4. Upon principle and authority, in the absence of a statute existing at the time of his subscription, providing for consolidation upon a vote less than the whole, or for the purchase of the interests of dissenting stockholders, the shareholder will neither be bound to consent to the consolidation nor to surrender his interest in his original corporation. NOYES ON INTERCORPORATE RELATIONS, § 47; THOMPSON ON CORPORATIONS, § 343. Otherwise the obligation of the contract between the shareholder and the corporation would be impaired. Nevertheless, the authorities have recognized an exception to this rule in the case of quasi-public corporations, concerning which they have said that the legislature in the exercise of the sovereign power of eminent domain, may authorize the consolidation of railroads and other quasi-public corporations, without the unanimous consent of their stockholders. Only one case, it appears, aside from the principal case, directly supports this position. *Black* v. *Delaware Etc. Canal Co.,* 24 N. J. Eq. 455. Yet text-writers generally have adopted the view of this case. MORAWETZ ON PRIVATE CORPORATIONS, (2nd. Ed.) § 1089; NOYES ON INTERCORPORATE RELATIONS, § 51; COOK ON CORPORATIONS, § 896. Several states have also passed laws similar to the North Carolina statute, and the Connecticut law even permits compulsory consolidation by condemnation of the minority shares, when any railroad company has acquired by purchase three-fourths of the shares of another railroad company.

The exercise of the power of eminent domain is justifiable only through public necessity, and the fact that the right of consolidation and condemnation of dissenting stock is dependent upon the consent of the majority of the

stockholders is itself conclusive against its necessity. 5 *Yale Law Journal,* 205. On the whole, the theory that the stock of dissenting shareholders may be seized by the majority under the power of eminent domain seems radically unsafe and unsound. If an actual public necessity exists, rather let the legislature directly determine that necessity, instead of permitting it to be determined by the majority of stockholders. Thus a few minority shareholders could not prevent the completion of a great public enterprise, such as a continuous line of railway formed from consolidating shorter lines.

COMPULSORY VACCINATION.—The opponents of vaccination as a preventive of smallpox have been trying for almost fifteen years to obtain assistance from the courts in their efforts to resist the enforcement of compulsory vaccination by school boards and other state agencies. The first American case which sustained the validity of such legislation was *Abeel* v. *Clark,* 84 Cal. 226, decided in 1890. No case has ever denied the right of the state to make vaccination compulsory when the disease was actually present or an epidemic was threatened. Some have held that these conditions must exist in order to justify the measure. See *State ex rel.* v. *Burdge,* 95 Wis. 390. Others have held that mere general authority to regulate the public health or to make suitable rules and regulations respecting the conduct of the public schools, would not of itself authorize compulsory vaccination except in cases of present emergency. *Potts* v. *Breen,* 167 Ill. 67; *Blue* v. *Beach,* 155 Ind. 121; *Matthews* v. *Board of Education,* 127 Mich. 530 (LONG and GRANT, JJ., dissenting); *Morris* v. *Columbus,* 102 Ga. 792.

A recent case decided by the Supreme Court of North Carolina has taken a much more liberal view respecting the rights of municipal boards to enforce compulsory vaccination under a grant of general authority. *Hutchins* v. *School Committee of Town of Durham* (1904), — N. C. —, 49 S. E. 46. And the court here expressly repudiated the limitation stated in *Potts* v. *Breen,* supra, and went even farther than *Bissell* v. *Davison,* 65 Conn. 183, which has heretofore been regarded as perhaps the broadest decision on this question.

But another feature of the *Hutchins* case is of interest. The court had recently decided in *State* v. *Hay,* 126 N. C. 999, that although no exception was stated in the regulation prescribing compulsory vaccination, the requirement nevertheless did not apply to one whose condition of health was such that vaccination would be dangerous; but the burden was upon the person seeking to escape vaccination to show a justification for non-compliance, and the sufficiency of the showing was for the jury, the person's own belief and the advice of his physician being non-conclusive. Hence an adequate showing of this character might be a complete defense to a criminal prosecution for failure to observe the regulation. But in the *Hutchins* case the action was mandamus, and it was sought to compel the admission into the public schools of the daughter of the plaintiff, who had not been vaccinated under the rule, by showing that her health was such that vaccination would be dangerous. But the court refused to approve this position, and said: "The fact that it would be dangerous to vaccinate the plaintiff's daughter, owing to her